



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
2170 SW CANAL STREET
STUART, FL 34997

REPLY TO
ATTENTION OF

May 6, 2008

Palm Beach Gardens Regulatory
Modification #1

South Florida Water Management District
Attn: Mr. Larry Carter
3301 Gun Club Road
West Palm Beach, FL 33406

Dear Mr. Carter:

The U.S. Army Corps of Engineers (Corps) has completed the review and evaluation of your modification request received by email on April 9, 2008, in which you asked to revise the special condition authorized by Department of the Army permit number SAJ-2008-562. The original permit authorized the construction of a sheet pile weir approximately 4,400 feet downstream of the S-65E gated Spillway Structure in the C-38 Canal. The project is located in waters of the United States within the C-38 Canal (Kissimmee River), Sections 28, 29, 30, 32, and 33, Township 37 South, Range 34 East, Okeechobee and Highlands County, Florida.

The proposed modification is to revise special condition number 6d in the permit issued on April 2, 2008, which originally stated that the permittee shall not remove any of the 39 cabbage palm trees as indicated in the S-65E Weir Gopher Tortoise Burrow and Crested Caracara Survey dated March 11, 2008.

During the construction phase of the project, it was discovered that some of the cabbage palm trees would need to be removed. Since the Audubon's crested caracara nests are difficult to observe in a cabbage palm tree, the applicant has agreed to view the top of the tree by using earth-moving equipment to verify that there are no nesting caracaras prior to impacting the tree. Therefore, the special condition has been revised to state "Provided that the applicant observes the cabbage palm tree from the air to verify that there are no caracara nests within the tree prior to removal, the applicant would be permitted to remove the cabbage palm tree."

The impact of your proposal on navigation and the environment have been reviewed and found to be insignificant. The permit is hereby modified in accordance with your request and in accordance with the condition above. You should attach this letter and enclosure to the permit. All other conditions of the permit remain in full force and effect. If you have any questions concerning permit modification, please contact the project manager Alisa Zarbo at the letterhead address, by telephone at 772-219-8418 or by electronic mail at Alisa.A.Zarbo@usace.army.mil.

Thank you for your cooperation with our permit program. The Corps Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to take a few minutes to visit the following link and complete our automated Customer Service Survey:
http://www.saj.usace.army.mil/permit/forms/customer_service.htm.
Your input is appreciated - favorable or otherwise.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:



Paul L. Grosskruger
Colonel, U.S. Army
District Commander

Copy Furnished:

CESAJ-RD-PE

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: SFWMD		File Number: SAJ-2008-562	Date: May 6, 2008
Attached is:		See Section below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
X	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I- The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/ceewo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact:

Project Manager as noted in letter

If you only have questions regarding the appeal process you may also contact:

**Michael F. Bell
404-562-5137**

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date: _____

Telephone number: _____